

JPA / ECS File No.: 05-130  
AG Contract No.: KR06-0086TRN  
Project No.: PLH-NNA-0(011)A  
Project: Lone Pine Dam Road  
Section: Bridge and approach design  
TRACS No.: SS615 03D  
Budget Source Item No.: n/a

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
NAVAJO COUNTY

**THIS AGREEMENT** is entered into this date August 14<sup>th</sup>, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the NAVAJO COUNTY, acting by and through its BOARD OF SUPERVISORS (the "County").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. The interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations, under which funds for the project are authorized to be expended.

5. The County, in order to obtain federal funds for the design of the project, is willing to provide County funds to match federal funds in the ratio required or as finally fixed and determined by the County and FHWA.

NO. 28365

Filed with the Secretary of State

Date Filed: 8/14/06

Janice K. Shivers  
Secretary of State

By: [Signature]

6. The work embraced in this Agreement is for the design of a bridge and approaches over Show Low Creek along Lone Pine Dam Road in Navajo County, hereinafter referred to as the "Project." Lone Pine Dam is considered to be an unsafe dam by the Arizona Department of Water Resource Dam Safety Division. The County will be responsible for administering the design of the Project. The estimated cost of the Project is as follows:

Estimated Design Cost (TRACS No.: SS615 03D)	\$ 750,000.00
Estimated Federal-aid funds @ 100.0%	\$ 750,000.00
Estimated County Funds @ 0.0%	\$ 0.00

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The County shall:

a. If such Project is approved for design by FHWA, and the funds are available for design, hereby designate the State as authorized agent for the County.

b. The County will provide any required preliminary engineering and planning studies, the environmental analysis and design of the Project. As required by the FHWA, the State will provide design review of the Project plans, studies and related documents. When appropriate, the State will provide comments, which will be incorporated into the design documents.

c. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the design of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price.

d. Provide personnel to administer and supervise design efforts.

e. Consent to any inspections performed by the State, provide records or audit any books of the County in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

f. Invoice the State for the estimated 100.0% federal aid design and design administration costs incurred under this Agreement up to \$750,000.00. The County is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement, whether covered by federal funding or not.

g. Be obligated to incur the cost increase of said work due to unforeseen conditions or circumstances required by a change in the extent or Scope of Work called for by the County. Any such changes require the prior approval of the State.

h. The County may request the State, as authorized agent for the County, and all at the County's expense, to perform certain work and prepare certain documents required by the Federal Highway Administration to qualify certain, highway, bridge and railroad grade crossing projects for and to receive Federal Funds. Such work may consist of, but is not specifically limited to, the review and approval of the County prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations, review of reports, design plans, maps, and specifications, geologic materials testing and analysis; right-of-way related activities (when

specifically authorized by, for and on behalf of the County, and at no cost to the State) and such other related tasks essential to the achievement of the objectives of this Agreement.

i. The cost of the analysis and design work covered by this Agreement is to be borne by FHWA and the County, each in the proportion prescribed and determined by FHWA.

2. The State shall:

a. Agree to be the County's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for design and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the County will be responsible for any overage.

b. Approve the Project if such project design funds are available by FHWA for design of the Project. The State and FHWA hereby designates the County to self-administer the design Project.

c. Reimburse the County with federal funds at 100.0% of the project cost up to the maximum federal funds available and within thirty-days (30) of receipt and approval of an invoice for design work incurred under this Agreement. Therefore, the County agrees to set aside funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements, provided herein. This Agreement may be cancelled at any time prior to the award of a Project design contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the County terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith the improvements contemplated, cost over-runs and claims. The County will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The County will also require its contractors to name the State as an additional indemnitee in the County's contracts with its contractor(s). It is understood and agreed that the State's participation is confined solely to securing Federal Aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the County and that, to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or non performance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees or independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

3. The cost of design work covered by this Agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the County agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Navajo County  
Attn: Dusty Parsons  
Director of Public Works  
P.O. Box 668  
Holbrook, Arizona 86025  
928-524-4100  
928-524-4239 Fax

9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

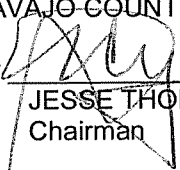
10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

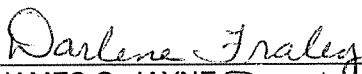
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**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

NAVAJO-COUNTY BOARD OF SUPERVISORS

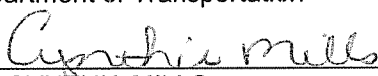
By   
JESSE THOMPSON  
Chairman  
by Vice-Chairman  
Percy Deal

ATTEST:

By   
JAMES G. JAYNE  
Clerk of the Board  
Darlene Fraley

STATE OF ARIZONA

Department of Transportation

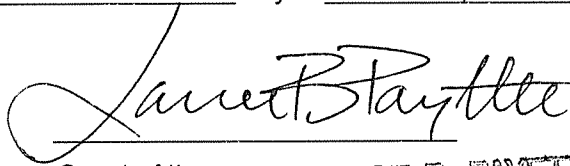
By   
CYNTHIA MILLS  
Contract Administrator  
Joint Project

**ATTORNEY APPROVAL FORM FOR THE NAVAJO COUNTY**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the County, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 12<sup>TH</sup> day of July, 2006.



County Attorney

LANCE B. PAYETTE  
CHIEF DEPUTY

**RESOLUTION NO. 56-06**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF  
NAVAJO COUNTY, ARIZONA FOR AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF  
ARIZONA AND NAVAJO COUNTY FOR LONE PINE DAM ROAD, PROJECT PLH-NNA-0(011)A**

**THIS INTERGOVERNMENTAL AGREEMENT** is made pursuant to 11-951 through 11-954 by and between the State of Arizona and Navajo County, political subdivisions of the State of Arizona.

**RECITALS:**

**WHEREAS**, the State is empowered by Arizona Revised Statutes 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State; and

**WHEREAS**, the County is empowered by Arizona Revised Statutes 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County; and

**WHEREAS**, Congress has authorized appropriations for, but not limited to, the constructions of streets and primary, feeder and farm-to market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings; and

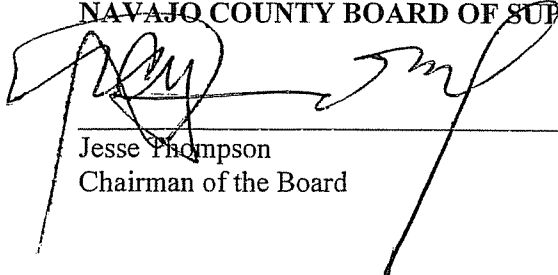
**WHEREAS**, The interest of the state for this project is in the acquisition of Federal funds for the use and benefit of the County by reason of federal law and regulations, under which funds for the project are authorized to be expended; and

**WHEREAS**, The County, in order to obtain federal funds for the design of the project, is willing to provide County funds to match federal funds in the ratio required or as finally fixed and determined by the County and FHWA.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Supervisors of Navajo County that the Intergovernmental Agreement for Lone Pine Dam Road, project number PLH-NNA-0(011)A with the State of Arizona in the form attached hereto is hereby APPROVED, and the Chairman is hereby authorized to execute said Intergovernmental Agreement on behalf of Navajo County.


**PASSED, ADOPTED AND APPROVED** by the Board of Supervisors on July 17, 2006.

**NAVAJO COUNTY BOARD OF SUPERVISORS**

  
\_\_\_\_\_  
Jesse Thompson  
Chairman of the Board

ATTEST:

  
\_\_\_\_\_  
Darlene Fraley, Deputy Clerk of the Board

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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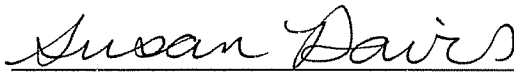
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0086TRN (**JPA 05-130**), an Agreement between public agencies, i.e., The State of Arizona and Navajo County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 3, 2006

TERRY GODDARD  
Attorney General

  
\_\_\_\_\_  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:972860  
Attachment